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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,830	01/20/2004	David J. Lutz	10448-002	4057

29391 7590 04/18/2007  
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SUITE 2500  
ORLANDO, FL 32801

EXAMINER
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CAJILIG, CHRISTINE T

ART UNIT	PAPER NUMBER
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3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/761,830

Applicant(s)

LUTZ, DAVID J.

Examiner

Christine T. Cajilig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 8, 9, and 10 and accordingly, dependent claims 2-6 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 8 are indefinite the body of the claims positively recites a ventilation pipe and defines the dimensions of a ventilation pipe protector with respect to a ventilation pipe. The claimed invention cannot be defined in terms of a structure that is not defined as part of the claimed invention. Furthermore, in Applicant's response dated 10/30/06, Applicant has indicated that the claims are directed to a ventilation pipe protector. As such, the claims are examined as directed to a ventilation pipe protector.

Claim 8 recites the limitation "the inside diameter" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the outside diameter" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the top" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the top" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 8, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Hernandez (U.S. Pub. No. 2003/0110554 A1).

Regarding claim 1, Hernandez, in Figure 6, discloses a ventilation pipe protector adaptable to a ventilation pipe comprising a tubular sleeve (14') having a sleeve outside diameter (d) capable of fitting within a ventilation pipe inside diameter, said tubular sleeve for receiving a gas from said ventilation pipe; a hollow head (60) having a head outside diameter (e) larger than said sleeve outside diameter (d) and comprising a plurality of passageways (f) sized to allow egress of the gas from said hollow head and to prevent ingress of animals and debris into said hollow head (60), and a neck portion (58) coupling said hollow head to said tubular sleeve, said neck portion having a transitioning outside diameter (12') from said head outside diameter adjacent said hollow head to said sleeve outside diameter adjacent said tubular sleeve, said neck portion capable of contacting a top opening (g) of said ventilation pipe; wherein at least a portion of said neck is capable of contacting said top opening and at least a portion of

said neck capable of extending into said top opening to achieve a low tolerance fit to said ventilation pipe.

Regarding claim 2, Hernandez, in Figure 6, discloses a ventilation pipe protector wherein said hollow head comprises (60) a convex shaped end (60) opposite an end of said hollow head attached to the sleeve (14').

Regarding claim 4, Hernandez, in Figure 6, discloses a ventilation pipe protector wherein said head outside diameter (e) that is larger than a ventilation pipe (50) outside diameter (c).

Regarding claim 8, Hernandez, in Figure 6, discloses a ventilation pipe plug for insertion into a top opening of a ventilation pipe to prevent entry of debris and other objectionable items into the top opening while still allowing ventilation of gas therefrom, the plug comprising a tubular sleeve (14') transitioning in diameter to a larger conical neck (58) transitioning in diameter to a still larger hollow head (60), wherein said plug comprises a plurality of ventilation orifices (f, 18') sized to prevent entry of debris while still allowing ventilation of gas; the tubular sleeve having an outside diameter (d) capable of fitting within the inside diameter of the ventilation pipe to allow the sleeve to be easily inserted within the ventilation pipe; the hollow head having a outside diameter (e) capable of preventing the plug from completely entering the ventilation pipe; and the conical neck having a transitioning outside diameter from the smaller sleeve diameter to the larger head diameter such that at least a portion of said neck is capable of extending into the top opening of the ventilation pipe and allows the neck to rest atop the top opening of the ventilation pipe achieving a gravity operable low tolerance fit.

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Regarding claim 9, Hernandez, in Figure 6, discloses a ventilation pipe protector wherein the top of the hollow head comprises a convex shape.

Claim 8 is rejected under 35 U.S.C. 102(e) as being anticipated by Howson (U.S. Patent No. 6,799,606).

Regarding claim 8, Howson, in Figure 6, discloses a plug for insertion into a top opening of a ventilation pipe to prevent entry of debris and other objectionable items into the top opening while still allowing ventilation of gas therefrom, the plug comprising a tubular sleeve (28) transitioning in diameter to a larger conical neck (26) transitioning in diameter to a still larger hollow head (14), wherein said plug comprises a plurality of ventilation orifices (52) sized to prevent entry of debris while still allowing ventilation of gas; the tubular sleeve having an outside diameter capable of fitting within the inside diameter of the ventilation pipe to allow the sleeve to be easily inserted within the ventilation pipe; the hollow head having a outside diameter capable of preventing the plug from completely entering the ventilation pipe; and the conical neck having a transitioning outside diameter from the smaller sleeve diameter to the larger head diameter such that at least a portion of said neck is capable of extending into the top opening of the ventilation pipe and allows the neck to rest atop the top opening of the ventilation pipe achieving a gravity operable low tolerance fit.

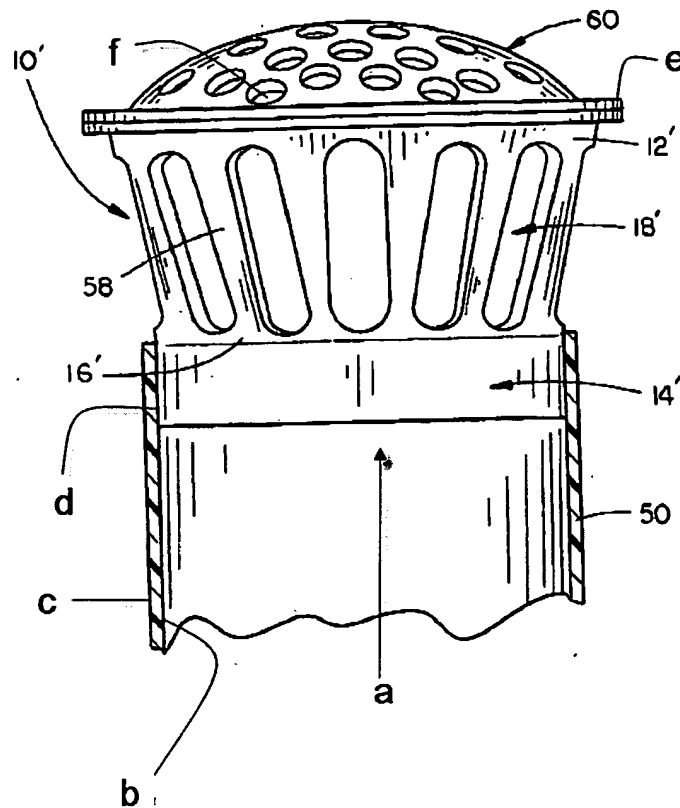


FIG. 6

Hernandez (U.S. Pub. 2003/0110544 A1)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

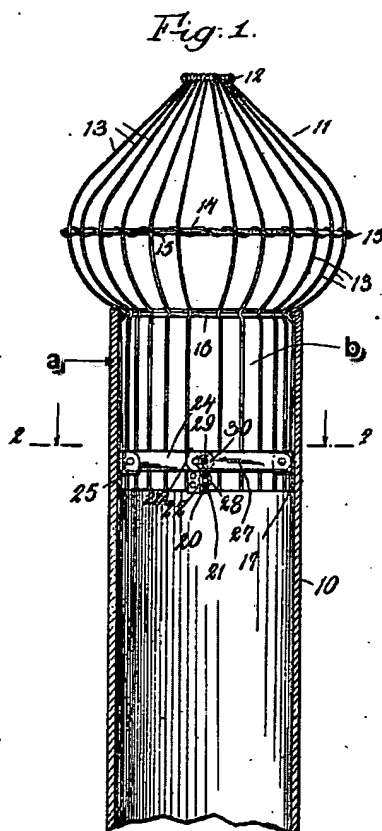
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez ('554 A1) in view of McDonald (U.S. Patent No. 5,291,707).

Regarding claims 3 and 10, Hernandez discloses the limitations as discussed above, but does not disclose said hollow head comprising an apex end opposite an end of said hollow head attached to the sleeve. However, McDonald in Figure 3, teaches a vent bird protector with a head (36) comprising an apexed end (26) opposite an end of said hollow head attached to the sleeve (39). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the ventilation pipe protector of Hernandez to include a head comprising a peaked end opposite an end of said hollow head attached to the sleeve as taught by McDonald to prevent birds from perching on the stack (Col 1, Ln 58-60).

Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez ('554 A1) in view of Levy (U.S. Patent No. 926,704). Hernandez discloses the limitations as discussed above, but does not disclose said tubular sleeve comprising a plurality of passageways sized to allow the gas to flow from the ventilation pipe into said tubular sleeve. However, Levy in Figure 1, teaches a vent strainer with a sleeve (a) comprising a plurality of passageways (b) sized to allow the gas to flow from the ventilation pipe into the sleeve. Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the ventilation pipe protector of Hernandez to include a sleeve comprising a plurality of passageways sized to allow the gas to flow from the ventilation pipe into the sleeve as taught by Levy to provide a sleeve that can be readily attached onto the ventilation pipe (Page 1, Ln 9-16).





Levy (U.S. Patent No. 926,704)

Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez ('554 A1) in view of Brenner (U.S. Patent No. 2,768,007). Hernandez discloses the limitations as discussed above, but does not disclose a washer disposed around said tubular sleeve and abutting said hollow head, the washer comprising a washer inside diameter larger than said sleeve outside diameter and smaller than said head outside diameter, and a washer outside diameter larger than a ventilation pipe outside diameter. However, Benner in Figure 9, teaches a washer (20) disposed around the sleeve (18) and abutting a head (f), the washer (20) comprising a washer inside diameter (b) larger than the sleeve outside diameter (d) and smaller than said

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hollow head outside diameter (a), and an outside diameter (c) larger than the pipe (10) outside diameter (e). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the ventilation pipe protector of Hernandez to include a washer disposed around the sleeve and abutting said hollow head, the washer comprising a washer inside diameter larger than the sleeve outside diameter and smaller than said hollow head outside diameter, and an outside diameter larger than the ventilation pipe outside diameter as taught by Benner to allow any diameter sleeve and head to fit into a pipe with a larger diameter without falling through (Col 2, Ln 30-37).

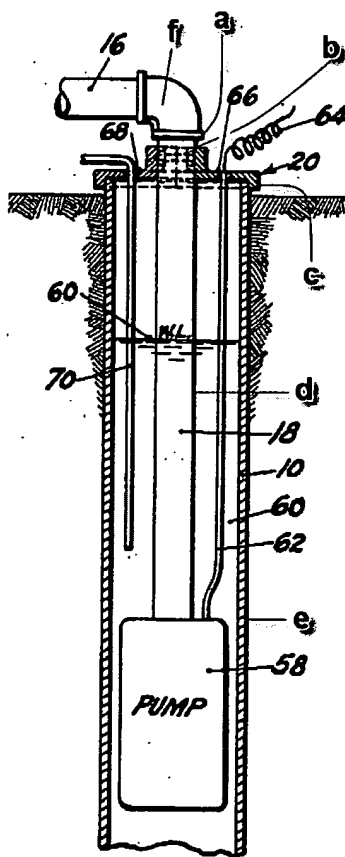


FIG. 9

Brenner (U.S. Patent No. 2,768,007)

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howson (U. S. Patent No. 6,799,606).

Regarding claim 11, Howson discloses the structure as discussed above but does not disclose that the plug further comprises a collar disposed around the conical neck of the plug capable of accommodating ventilation pipes having a larger outside diameter than the outside diameter of the head, the washer having an inside diameter larger than the sleeve outside diameter and smaller than the head outside diameter, and an outside diameter that would be larger than the outside diameter of the ventilation pipe. However, Howson also discloses the use of a collar 88 that contacts the underside of head 14 as shown in the embodiment of Figure 10. Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention to modify the Figure 6 embodiment of Howson to include a drain collar 88 as shown in the Figure 10 embodiment of Howson to provide a seal. Per such modification collar 88 would contact the neck portion 26 of Figure 6.


### ***Response to Arguments***

Applicant's arguments filed February 2, 2007 and April 4, 2007 have been fully considered but they are not persuasive. As discussed in the rejection under 35 USC 102 above, Hernandez shows a neck portion with a transitioning diameter adapted to fit a variety of ventilation pipe openings, and thus reads on amended claim 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Cajilig whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday - Friday from 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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